

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

FRUDDEN PRODUCE, INC.,	)	
DENNIS FRUDDEN dba	)	
FRUDDEN PRODUCE, INC., and	)	Case Nos. 79-CE-338-SAL
FRUDDEN ENTERPRISES, INC.,	)	79-CE-338-2-SAL
	)	
Respondent,	)	
	)	
and	)	8 ALRB No. 42
	)	
UNITED FARM WORKERS	)	
OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	
	)	

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DECISION AND ORDER

On February 3, 1981, Administrative Law Officer (ALO) Arie Schroom issued the attached Decision in this proceeding. Thereafter, Respondent and General Counsel timely filed exceptions and a supporting brief, and the Charging Party and General Counsel each filed a reply brief.

Pursuant to the provisions of Labor Code section 1146,<sup>1/</sup> the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel.

The Board has considered the attached Decision in light of the exceptions<sup>2/</sup> and briefs of the parties and has decided to

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<sup>1/</sup>All code citations herein will be to the Labor Code unless otherwise specified.

<sup>2/</sup>General Counsel requested that Jose Luis Rucio's name be added to the list of hand-crew strikers; that request is hereby granted.

affirm the rulings,<sup>3/</sup> findings, and conclusions of the ALO and to adopt his recommended Order, as modified herein.

Respondent is a California corporation engaged in the raising and harvesting of tomatoes in the King City area of the Salinas Valley. Respondent first introduced tomato harvesters into its operations during 1979. The 1979 tomato harvest began in early August with Respondent utilizing four hand crews and three machine crews to harvest the tomatoes.

Due to a reduction in market demand for tomatoes, Respondent laid off a hand crew of thirty employees on August 20, 1979.<sup>4/</sup> During the following days, the remainder of the hand-crew employees became discontented because they were getting less than half the work they had received at the beginning of the season. During the first hour of work on August 27, the hand-crew employees met and decided to go out on strike to protest the lack of work.

Every member of the hand crew joined the strike, except for Miguel Angel Navarro, who went to work on the harvesting machines. They walked over to the field where the machines were operating and asked the machine workers to join them. All but seventeen of the machine workers joined the strike. There was a total of 206 strikers: 133 hand-crew employees, 61 machine-crew

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<sup>3/</sup> During the hearing, the ALO granted General Counsel's motion to amend the caption. The change is reflected herein.

<sup>4/</sup> Unless otherwise stated, all dates refer to 1979.

employees,<sup>5/</sup> five tractor drivers, four dumpers, and three checkers.<sup>6/</sup>

The strikers assembled in one of Respondent's fields and elected a ranch committee with Jose Luis Rucio as chairman. Rucio contacted the United Farm Workers of America (AFL-CIO)(UFW). The UFW sent an organizer to collect authorization cards from the Frudden strikers. On August 29, 1979, an expedited election was held under section 1156.3(a) (4) of the Act. As a result of the election (UFW-201; No Union-4) the Board subsequently certified the UFW as the exclusive collective bargaining representative of Respondent's agricultural employees. (Frudden Enterprises, Inc. (Aug. 21, 1981) 7 ALRB No. 22.)

On the first day of the strike, August 27, Respondent continued to operate the three harvesting machines, manning them with supervisory personnel and volunteers. Respondent began hiring replacement workers for the machines on August 28. Respondent did not harvest tomatoes from August 30 through September 3 because the tomatoes were too green. Operations resumed on September 4, with none of the striking employees being rehired. The UFW filed a charge on that same date, alleging that Respondent had discriminatorily retaliated against the employees for engaging in union activities by refusing to rehire them.

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<sup>5/</sup>Two machine workers, Maria Elena Hernandez and Rosa Robles returned to work during the last two days of the strike. This is reflected hereinafter with reference to 204 strikers and 59 machine-crew strikers.

<sup>6/</sup>Our figures differ from those of the ALO. Any discrepancies can be resolved at the compliance proceeding.

The ALO concluded that Respondent violated section 1153(c and (a) of the Act by failing and refusing to rehire the economic strikers who had not been permanently replaced at the time they made unconditional offers to return to work and by discriminating in its employment practices in 1979 and 1980 to discourage its employees from engaging in union activities. Respondent excepts to these conclusions.

#### The Strike

The employees herein went out on strike to protest the fact that since the tomato harvesters were brought in, the handpick crews were getting less work. Employees who engage in a lawful strike or work stoppage for some reason(s) other than to protest against an employer's unfair labor practices are economic strikers. Typically, such a strike is called to support employee demands for changes in their wages and/or working conditions. (German, Basic Text on Labor Law (St. Paul, 1976) p. 339.) Clearly, the strike herein was thus an economic strike, and we so find.

Under established precedent of the National Labor Relations Board (NLRB), economic strikers who unconditionally apply for reinstatement have a right to immediate reinstatement if they have not been permanently replaced. Economic strikers who have been permanently replaced prior to their unconditional offer to return to work have a continuing right to preferential hiring and full reinstatement upon the departure of the permanent replacement or to any other equivalent employment that becomes available. (NLRB v. Fleetwood Trailer Co., Inc. (1967) 389 U.S. 375 [66 LRRM 2737]; Laidlaw Corp. (1968) 171 NLRB 1366 [68 LRRM 1252] enforced

(7th Cir. 1969) 414 F.2d 99 [71 LRRM 3054], cert. den. (1970) 397 U.S. 920 [73 LRRM 2537]. See Seabreeze Berry Farms (Nov. 16, 1981) 7 ALRB No, 40.) Respondent argues that it was under no duty to reinstate the strikers because they never made a legally effective unconditional offer to return to work. We disagree.

The purpose served by an unconditional offer to return to work is to notify the employer that the strikers are desirous of returning to work and are not conditioning their return on any demands they may have made before or during the strike. The underlying policy is to get the striking employees back to work quickly. Thus, the strikers' unconditional offers to return to work need not measure up to any formal requirements. Indeed, the U. S. Supreme Court has stated that the employees' "... right to reinstatement does not depend upon technicalities relating to [their] application ...." (NLRB v. Fleetwood Trailer Co., Inc., supra, 389 U.S. 325, 381.)

It has been held that the appearance of strikers at a plant to solicit an answer to the question as to whether they still had their jobs, was tantamount to an unconditional offer to return to work. (Leon Ferenbach, Inc. (1974) 212 NLRB 896 [87 LRRM 1631].) The National Labor Relations Board stated at page 899:

When the 6 employees appeared at the plant they were seeking reinstatement. Their action in reporting to the office was obviously for that purpose. There was nothing about their conduct to suggest that their return to work was being made conditionally. Their appearance at the plant that day to solicit an answer from Respondent as to whether they still had their jobs was tantamount to an unconditional offer to return to work.

In H & F Binch (1971) 188 NLRB 720 [76 LRRM 1735], 15

employees walked off their jobs to protest changes in working conditions. The employer hired replacements. The 15 employees walked into the plant as a group and took their places at their machines. A foreman informed them that they had been replaced and told them to report to the personnel office. The Trial Examiner concluded that by walking into the plant, the strikers made separate unconditional offers to return to work. In affirming this conclusion, the board stated that "... the strikers made unconditional offers to return to work by virtue of their appearance for work . . . ." The strikers, by "... attempting to return to work, applied for reinstatement." (H & F Binch, supra, at p. 724.)

These cases illustrate that an unreplaced economic striker's right to reinstatement does not depend upon the manner or form of his offer to return to work. The national board considers and evaluates the strikers' actions as well as their statements to determine whether the strikers manifested a clear and unconditional request to return to work. (See Swearington Aviation Corporation (1976) 227 NLRB 228 [94 LRRM 1394].)

Applying these principles to the instant case, we find that the striking employees made unconditional offers to return to work on August 29 and on September 4. Immediately after the election on the evening of August 29, employee Jose Luis Rucio, representing the 200-plus strikers, informed Dennis Frudden that the strike was over and all the strikers wanted their jobs back. Frudden heard the offer but did not respond. He climbed into his

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pickup truck and drove away.<sup>7/</sup>

At 6:00 a.m. on September 4, the 204 employees showed up at Respondent's fields prepared to return to work. A majority of these workers carried buckets used in hand picking tomatoes. Jose Luis Rucio, again acting as the group's spokesman, informed Dennis Frudden that the strikers were ready to return to work. We find that the employees, by appearing at Respondent's field prepared to go to work, and by informing Respondent through Rucio that they were ready to return to work made a second unconditional offer to return. (See Leon Ferenbach, Inc., supra, 212 NLRB 896.)

Respondent had the duty to rehire all of the economic strikers who had not been permanently replaced prior to the time they made their August 29 unconditional offer to return to work. (Seabreeze Berry Farms, supra, 7 ALRB No. 40; NLRB v. Fleetwood Trailer Co., Inc., supra, 309 U.S. 375; Laidlaw Corp., supra, 171 NLRB 1366.) Respondent hired replacement workers for the harvesters on August 28 and 29. Respondent did not harvest from August 30 through September 3. Due to a high turnover of the replacement machine workers during the strike, when harvesting resumed on September 4, there were only 35 replacement machine

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<sup>7/</sup>Dennis Frudden denied that the employees made an unconditional offer to return to work, and even denied that he was present at the polling site that evening. The ALO discredited Frudden's testimony, finding him to be an unreliable witness. To the extent that the ALO's credibility resolutions are based upon demeanor, we will not disturb them unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. (Adam Dairy dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24; Standard Dry Wall Products (1950) 91 NLRB 544 [26 LRRM 1531].) We have reviewed the record and find the ALO's credibility resolutions to be supported by the record as a whole.

workers. There were also 15 non-striking employees working on the harvesters. Just before the strike commenced, there were 76 machine workers. Thus, there were 26 vacant machine worker positions as of the morning of September 4. Economic strikers have a continuing right to preferential hiring and full reinstatement upon the departure of the permanent replacements. (NLRB v. Fleetwood Trailer Co., Inc., supra; Laidlaw Corp., supra.) Respondent thus had a duty to reinstate 26 of the 59 machine-crew strikers. Instead, Respondent hired 24 new employees as they applied for work in the fields on September 4. Respondent's failure to reinstate strikers to those 26 vacant positions constitutes a violation of section 1153 (c) and (a) of the Act.

In Seabreeze Berry Farms, supra, 7 ALRB No. 40, this Board concluded that in economic strike situations it would accept the employer's characterization of its replacement workers as "permanent" for the duration of the season when the employees are on strike. In that case, the replacements worked for the remainder of the season and the Respondent did not hire new employees. We also stated that when the evidence establishes that the replacement workers were in fact hired on a temporary basis, we would not depart from NLRB precedent regarding temporary replacements. That precedent holds that returning economic strikers who have been temporarily replaced have a continuing right to immediate reinstatement when they express or communicate their unconditional offer to return to work. (Seabreeze, supra; NLRB v. Murray Products Inc. (9th Cir. 1978) 584 F.2d 934 [99 LRRM 3272]; W.C. McQuade Products Inc. (1978) 327 NLRB 177 [98 LRRM 1595]; NLRB v. Fleetwood Trailer Co., Inc., supra,

389 U.S. 375.)

In the instant case, Respondent hired 28 new replacement workers on August 28. On August 29, it hired 25 replacements and on September 4, it hired 24 replacements. This hiring pattern illustrates the high turnover among the replacements and suggests that they were not permanent replacements. However, Frances Arroyo, the forewoman of the harvesting machines, testified that she had promised the replacements employment until the end of that season. Her testimony was uncontroverted. We conclude that the hiring pattern alone is not sufficient to meet General Counsel's burden of proving by a preponderance of the evidence that the replacement workers were hired on a temporary basis for the remainder of the season.

#### Conversion of the Strike

Under the NLRB's "conversion" doctrine, a strike which begins as an economic action may be converted into an unfair-labor-practice strike by any employer unfair labor practice which tends to prolong the strike. (German, Basic Text on Labor Law (St. Paul, Minn. 1976) p. 339; See Admiral Packing Company (Dec. 14, 1981) 7 ALRB No. 43; NLRB v. Pecheur Lozenge Company (2nd Cir. 1953) 209 F.2d 393 [66 LRRM 2677], cert, denied, (1954) 347 U.S. 953 [34 LRRM 2027].)

In the instant case, the employees renewed the strike on September 4 when Respondent refused to reinstate the 26 economic strikers who had not been permanently replaced. Jose Luis Rucio testified that the workers stood around the field waiting to see if they would be called to work. Instead, new employees were hired.

The workers picketed the field again on September 5 and 6. An employer's refusal to reinstate unreplaced economic strikers at their unconditional request despite the availability of job openings had been found to convert an economic strike into an unfair-labor-practice strike. (Weather Tec Corporation v. NLRB (1978) 238 NLRB 1535 [99 LRRM 1709]; enforced (9th Cir. 1980) 626 F.2d 868.)

Unfair-labor-practice strikers are accorded broader reinstatement rights than economic strikers because they are regarded as withholding their labor to protest employer violations of the Act and not simply to force financial concessions from an unwilling employer. (Admiral Packing Company, supra, 7 ALRB No. 43.) Unfair-labor-practice strikers are entitled to reinstatement to their former or equivalent positions upon their unconditional offer to return to work even if employees hired to permanently replace them must be discharged to make those positions available. (NLRB v. Fleetwood Trailer Co., Inc., supra, 389 U.S. 375; NLRB v. Murray Products, Inc. (9th Cir. 1978) 584 F.2d 934 [99 LRRM 3272].)

The strikers herein made their unconditional offers to return to work on August 29 and September 4. On September 4, the employees renewed the strike as an unfair-labor-practice strike. Unfair-labor-practice strikers are not entitled to reinstatement to jobs which were assigned to permanent replacements before the economic strike was converted into an unfair-labor-practice strike. (R.J. Oil & Refining Co. (1954) 108 NLRB 641 [43 LRRM 1055].) Thus, the machine-crew strikers were entitled to immediate reinstatement only to those positions which had not been filled by permanent

replacements as of September 4, but they were entitled to preferential hiring to fill vacancies which occurred thereafter.

As discussed above, Respondent had a duty to rehire 26 of the 59 machine-crew strikers on September 4. Respondent's payroll records show that it hired 15 new employees on September 5, 12 new employees on September 6, one new employee on September 7, three new employees on September 10, and four new employees on September 12. Within an eight day period, Respondent hired 35 new employees to fill vacancies that should have been filled by the former machine-crew strikers. Thus, all the former machine-crew strikers should have been reinstated by September 12.

We shall order Respondent to list the 59 machine-crew strikers in the order it would have offered them reinstatement, using any fair, equitable and lawful method. The list will serve as the basis for the reinstatement and make whole provisions provided for in our Order.

#### The Hand Crews

Every member of the hand crew participated in the strike except for Miguel Angel Navarro, who went to work on the harvesting machines. As of September 4, when the strike was resumed as an unfair-labor-practice strike, Respondent had not hired any hand crew replacements. When the employees made their unconditional offer to return to work on that date, Respondent had an obligation to rehire the hand crew strikers to their former or equivalent positions. (Seabreeze Berry Farms, supra, 7 ALRB No. 40.) However, rather than doing so, Respondent rented two additional tomato-harvesting machines on September 4 and 5, and hired new employees to work on them.

Respondent argues that it had no legal duty to reinstate the strikers because it had hired permanent replacements to fill some positions and had eliminated other positions. We find no merit in Respondent's argument.

Absent a legitimate and substantial business justification, economic strikers are entitled to immediate reinstatement to their former or substantially equivalent jobs, unless their jobs have been permanently filled. (NLRB v. Fleetwood Trailer Co., Inc., supra, 389 U.S. 375.) In Fleetwood Trailer, the Court adverted to the possibility that a "... legitimate and substantial business justification ..." would be the elimination of strikers' jobs for bona fide and substantial business reasons such as the need to adapt to changes in business conditions or to improve efficiency. However, unfair-labor-practice strikers have an absolute right to reinstatement upon their unconditional offer to return to work and it is immaterial whether their positions have been abolished or consolidated. (International Union, United Auto., A & A Workers v. NLRB (1971 D.C. Cir.) 455 F.2d 1357 [79 LRRM 2031], citing Mastro Plastics Corp. v. NLRB (1956) 350 U.S. 270 [27 LRRM 2587].) Furthermore, when unfair-labor-practice strikers' jobs are no longer in existence, they must be reinstated to substantially equivalent positions, Victor Patino & Nydia Patino, et al. (1979) 271 NLRB 774 [100 LRRM 1616], or to jobs for which they are qualified, Burns Motor Freight, Inc. (1980) 250 NLRB 276 [103 LRRM 1540], Harris-Teeter Super Markets, Inc. (1979) 242 NLRB 132 [101 LRRM 1130]. This result flows from the general principle that "[u]nlike those who strike to secure economic objectives in an atmosphere untainted by

employer unfair labor practices, unfair-labor-practice strikers are not required to assume the risk of being replaced during the strike ...." (Colonial Press, Inc. (1973) 207 NLTRB 673, 675 [84 LRRM 1596]; Harris-Teeter Super Markets, Inc., supra.)

In the record before us, there is evidence that no special training was required to work on the harvesting machines. In fact, Respondent hired new employees who had never worked on tomato harvesters before. In addition, Frances Arroyo, the forewoman of the machine workers testified that the hand-crew employees could easily perform machine work because sorting tomatoes in the fields and on the machines involved the same skills. As the hand-crew employees were qualified to perform machine work, Respondent violated section 1153(c) and (a) of the Act by failing to hire them to fill the machine positions which became available when the two additional harvesters were brought into the fields.

We note, however, that on September 9, Respondent began preparations to organize and hire two hand crews. The hand-crew employees decided among themselves which workers would make up those crews. On September 11, one crew of approximately 30 former strikers returned to work while the second crew consisting of approximately 40 workers returned on September 12. Respondent's backpay liability to these hand-crew employees ended on the day they returned to work.

Respondent's backpay liability to the strikers who were not reinstated in 1979 did not end that year. Backpay liability for an employer's unlawful failure or refusal to reinstate ceases only when the employer makes an unconditional offer of reinstatement to

the former strikers. (German, Basic Text on Labor Law (St. Paul, Minn. 1976) p. 348; Phelps-Dodge Corp. v. NLRB (1941) 313 U.S. 177 [8 LRRM 439]; NLRB v. Thayer Co. (1st Cir. 1954) .213 F.2d 748 [34 LRRM 2250] cert, denied (1954) 348 U.S. 883 [35 LRRM 2100].) As Respondent did not offer reinstatement to the strikers in 1980, it is liable for backpay until such time as it did, or does, make such an offer.

The ALO concluded that Respondent discriminatorily added the two additional harvesting machines to retaliate against the strikers for their union activities. Respondent excepts, arguing that the introduction of the two machines on September 4 and 5 was part of its continuing mechanization program. We find no merit in Respondent's exception.

To establish a prima facie case of discriminatory conduct, the General Counsel must show that the employees were engaged in protected activity, that Respondent had knowledge of such activity, and that there was some connection or causal relationship between the protected activity and the discriminatory conduct. (Verde Produce Company (Sept. 10, 1981) 7 ALRB No. 27; Jackson and Perkins Rose Company (Mar. 19, 1979) 5 ALRB No. 20.)

If the General Counsel establishes a prima facie case that protected activity was a motivating factor in the employer's decision, the burden then shifts to the employer to prove that it would have reached the same decision in the absence of the protected activity. (Martori Brothers Distributors v. Agricultural Labor Relations Board (1981) 29 Cal.3d 721; Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1169]; Nishi Greenhouse (Aug. 5, 1981)

7 ALRB No. 18.)

The striking employees herein engaged in protected activities by participating in a strike against Respondent, signing union authorization cards, and voting overwhelmingly in favor of the UFW. Respondent had knowledge of those activities as they were witnessed by Dennis Frudden and/or the supervisors.

The timing of an alleged discriminatory act can help establish the causal relationship between the Respondent's knowledge of the union activity and the discriminatory conduct. Before the strike, Respondent made a general inquiry of Steve Horvath, the owner of Gonzalez Packing, concerning the possibility of renting two harvesting machines. However, it wasn't until August 28, the second day of the strike, that Respondent entered into two written contracts to rent the two machines. Furthermore, Respondent did not hire employees to work on the machines until September 4. In addition, Dennis Frudden testified that the strike was one of the factors which prompted him to rent the additional machines.

Respondent argues that it rented the two additional harvesters for purely economic reasons. We note, however, that based on financial figures supplied by Dennis Frudden, the ALO concluded that it actually cost more per ton to harvest with the rented machines.

Additional evidence of Respondent's discriminatory motive is that Dennis Frudden tacitly rejected the strikers' unconditional offer to return to work on August 29, when there were still positions to be filled, which Respondent elected to fill with replacements rather than former strikers. Similarly, even after

Dennis Frudden rejected the strikers second unconditional offer on September 4, his conduct evidenced a desire to hire new workers as replacements rather than any of the former strikers. New employees had to be hired to operate the additional harvesters, but, Respondent did not inform any of the strikers that they could apply for those positions. In fact, the evidence shows that those strikers who did attempt to apply for work on the harvesters were forestalled and given the run-around by Respondent's foremen or supervisors. That course of conduct continued after the strike in 1979 and on through the 1980 harvest.

Respondent argues that it had a long-standing policy against permitting cross-overs between hand-crew employees and machine-crew workers. This policy, Respondent contends, is the reason why it did not inform the former strikers that they could apply for jobs on the two additional harvesters. Respondent's argument appears specious and unpersuasive when one considers that whatever considerations triggered the policy against employees crossing over between the crews were not present when the hand crews were eliminated. In addition, Miguel Angel Navarro, the only hand-crew employee who did not join the strike, went to work on the machines.

We find that Respondent discriminatorily replaced the employees in its hand crews by renting two additional harvesting machines and we conclude therefore that Respondent thereby violated section 1153 (c) and (a) of the Act.

#### Restoration of the Status Quo Ante

The ALO concluded that in order to remedy the adverse

effects of Respondent's unfair labor practice it is necessary to require Respondent to restore the status quo ante in its operations, i.e., to reestablish the prior operation consisting of three harvesting machines with their corresponding crews and three hand crews. The NLRB adheres to the well-established principle that restoration of the status quo ante is an appropriate remedy in cases involving an employer's discriminatory acts or conduct unless the employer can demonstrate that such a remedy would endanger its continued viability. (R & H Masonry Supply, Inc. (1978) 238 NLRB 1044 [99 LRRM 1714]; Sunflower Novelty Bags, Inc. (1976) 225 NLRB 1331 [93 LRRM 1186]; Ruline Nursery (Feb. 9, 1982) 8 ALRB No. 8.) See also N. C. Coastal Motor Lines (1976) 219 NLRB 1009, enforced (4th Cir. 1976) 542 F.2d 637 wherein the Board stated that it is not restricted to ordering such a remedy only when a respondent has acted from union animus.

Respondent excepts to the ALO's proposed remedy and contends that it will suffer a devastating financial loss if it is ordered to restore its previous method of operation. We do not agree.

First of all, Respondent did not purchase the two additional harvesting machines. It signed written contracts to rent them. Secondly, the contracts were totally executory; Respondent could utilize the machines as little or as often as it chose to, and incurred a financial obligation only on those occasions when it actually utilized them.

While the national board is reluctant to order the resumption of a respondent's operations where the closing was for

nondiscriminatory reasons, (see, i.e., Burroughs Corporation (1974) 214 NLRB 571 [88 LRRM 1115]), this is not such a case. Respondent has not ceased its tomato harvest operation, it has merely changed the manner in which it is performed. In addition, we have concluded that the change was made for discriminatory purposes. Also, we note that Respondent hired back two hand crews on September 11 and 12 and reduced the number of machines from five to four on September 18. We therefore adopt the ALO's recommendation that Respondent be ordered to reestablish the method of harvesting utilized prior to September 4, 1979.<sup>8/</sup>

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Frudden Produce, Inc., et al, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to rehire any employee because of his or her strike activity or union activity.

(b) Discriminatorily adding additional tomato harvesters to replace employees because of their strike or union activity, or otherwise discriminating against any employee in regard to his or her tenure of employment, or any term or condition of employment because of his or her strike activity or union activity.

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<sup>8/</sup>Member McCarthy finds the status quo ante remedy not warranted in these circumstances. He is not persuaded that the majority is correct in finding that Respondent's decision to convert from hand to machine harvesting was grounded in other than a pre-determined business judgment as to the manner in which it henceforth would conduct its harvest operations.

(c) In any like or related manner interfering with, restraining, or coercing any employee(s) in the exercise of their right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Reestablish the method of harvesting which Respondent utilized prior to September 4, 1979, that is, utilizing three harvesting machines and three hand crews and offer all former hand-crew strikers, listed in Appendices A and B attached hereto, and all former machine-crew strikers, listed on Appendix C attached hereto, immediate and full reinstatement to their former positions or to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for all losses of pay and other economic losses they incurred as a result of Respondent's refusal to reinstate them, together with interest thereon computed at the rate of seven percent per annum. The former machine-crew strikers shall be offered reinstatement in accordance with the preferential hiring list described on page 11 of this Decision. The backpay provided for herein shall be computed in accordance with established Board precedent.

(b) Preserve and, upon request, make available to this Board and its agents, for examination, photocopying and otherwise copying all payroll records, social security payment records,

time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the backpay period and the amount of backpay due under the terms of this Order.

(c) Sign the Notice to Employees attached hereto. Upon its translation by a Board agent into appropriate languages, Respondent shall reproduce sufficient copies in each language for the purposes set forth hereinafter.

(d) Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its property, the period and place (s) of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time between August 29, 1979, and the time such Notice is mailed.

(f) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its employees assembled on company time and property, at times and places to be determined by the Regional Director. Following the reading, a Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent

to all non-hourly wage employees to compensate them for time lost at this reading and during the question-and-answer period.

(g) Notify the Regional Director, in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply therewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: June 16, 1982

HERBERT A. PERRY, Acting Chairman

JEROME R. WALDIE, Member

JOHN P. MCCARTHY, Member

1979 HAND CREW STRIKERS

1. Almaraz, Guadalupe
2. Alvarado, Rafael V.
3. Bermudez, Jaime W.
4. Bueno, Mauricio
5. Camacho, Evangelina
6. Camacho, Domingo
7. Carcacho, Zacarias
8. Camargo, Maria Nelda
9. Chavez, Ana Perez
10. Chavez, Nicolas
11. Chavez, Jose S.
12. Chavez, Rafael
13. Chavez, Rafael Hernandez
14. Chavez, Ricardo C.
15. Chavez, Salvador
16. Cortez, Alicia L.
17. Cortez, Catalina
18. Cortez, Delfina
19. Cortez, Enrique
20. Cortez, Herrcelinda
21. Cortez, Jorge L.
22. Cortez, Jose Luis
23. Cortez, Juvenal L.
24. Cortez, Maria L.
25. Cortez, Maria M,
26. Cortez, Marin M.
27. Cortez, Roberto R.
28. Duarte. Carlos
29. Equihua, Armando
30. Espinoza, Elia Sepulveda
31. Espinoza, Emilio
32. Espinoza, Guillermo
33. Espinoza, Jorge E.
34. Espinoza, Juvencio
35. Espinoza, Juventinott
36. Espinoza, Maria
37. Espinoza, Maria Guadalupe
38. Espinoza, Miguel H.
39. Falcon, Mario F.
40. Galvez, Candelaria
41. Gonzalez, Carolina
42. Gonzales, Juan G.
43. Gonzalez, Julian
44. Gonzales, Servando
45. Guido, Andres C.
46. Hernandez, Hilaria M.
47. Hernandez, Rolando S.
48. Hurtado, Elva Q.
49. Hurtado, Jorge H.
50. Hurtado, .Mario N.
51. Lara, Angelina
52. Lara, Rafael

APPENDIX A

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|-----------------------------|----------------------------|
| 53. Lopez, Aristeo Topete   | 80. Ochoa, Guillermo       |
| 54. Lopez, Javier           | 81. Ochoa, Ignacio         |
| 55. Lopez, Yolanda Urbina   | 82. Ochoa, Pedro           |
| 56. Luna, Abigail Cortez    | 83. Pena, Rosalinda        |
| 57. Luna, Jovita Cortez     | 84. Perez, Agapito         |
| 58. Luna, Maria D.          | 85. Perez, Agiastin        |
| 59. Martinez, Refugio Luna  | 86. Perez, Anastacio N.    |
| 60. Magdaleno, Ramon        | 87. Perez, Araceli         |
| 61. Marquez, Isauro         | 88. Perez, Fidencio        |
| 62. Morin, Maria D.         | 89. Pina, Jose Luis        |
| 63. Moyin, Jose Silva       | 90. Quezada, David J.      |
| 64. Naranjo, Alvaro         | 91. Quezada, Gilberto C.   |
| 65. Naranjo, Emilia H.      | 92. Quezada, Lucia         |
| 66. Naranjo, Consuelo Perez | 93. Quezada, Piedad J.     |
| 67. Naranjo, Eloiza S.      | 94. Ramirez, Francisco     |
| 68. Naranjo, Elvia S.       | 95. Rios, Jorge            |
| 69. Naranjo, Gonzalo S.     | 96. Rios, Miguel Manuel    |
| 70. Naranjo, Irnelda        | 97. Rios, Teresa           |
| 71. Naranjo, Israael S.     | 98. Rocha, Juan            |
| 72. Naranjo, Josefina       | 99. Rodriquez, Maria Luisa |
| 73. Naranjo, Margarita S.   | 100. Rodriqtiez, Maria J.  |
| 74. Naranjo, Maria R.       | 101. Rucio, Jose Luis      |
| 75. Naranjo, Moises C.      | 102. Sanchez, Alicia       |
| 76. Naranjo, Natividad S.   | 103. Sanchez, Consuelo C.  |
| 77. Naranjo, Roberto C.     | 104. Sanchez, Eulalio N.   |
| 78. Naranjo, Salvador Perez | 105. Sanchez, Feliberto N. |
| 79. Ochoa, Bertha           | 106. Sanchez, Juan Cortez  |

107. Sanchez, Miguel N.
108. Sanchez, Salvador S.
109. Sanchez, Refugio Naranjo
110. Sepulveda, Concepcion
111. Sepulveda, Jose L.
112. Sepulveda, Reynaldo E.
113. Sepulveda, Reynaldo S.
114. Serrato, Eze Quiet
115. Serrato, Jose Luis
116. Serrato, Manuel
117. Serrato, Maria B.
118. Serrato, Maria Carmen
119. Serrato, Maria Cortez
120. Teran, Adolfo R.
121. Teran, Rafael
122. Urbina, Agustin
123. Urbina, Ramiro
124. Urbina, Roselia
125. Valencia, Luis Rodriquez
126. Vega, Pedro
127. Zavala, Dolorez
128. Zavala, Lilia
129. Zavala, Luis Perez
130. Zavala, Maurilio Perez
131. Zavala, Miguel
132. Zavala, Rafael Perez
133. Zavala, Refugio

## ADDITIONAL STRIKERS

### Checkers

1. Mendoza, Aurora
2. Meza, Leticia
3. Urbina, Guadalupe

### Tractor Drivers

1. Lopez, Anselmo
2. Lopez, Jr., Anselmo
3. Lopez, Salvador
4. Mendoza, Angel
5. Tinoco, Armando

### Dumpers

1. Castro, Javier
2. Lopez, Rene
3. Mendez, Jorge
4. Rodriguez, David

These employees shall be considered part of the hand crew for purposes of the remedy ordered herein.

1979 MACHINE-CREW STRIKERS

1. Arevalo, Jose Luis
2. Becera, Martha
3. Cervantes, Graciela
4. Davalos, Jesus
5. Davalos, Rigoberto
6. Domingo, Alejandra Salgado
7. Duarte, Rosalva
8. Escobar, Anita
9. Garcia, Maria
10. Garcia, Rafael
11. Gonzalez, Jimmy
12. Hernandez, Humberto
13. Hernandez, Julia
14. Hernandez, Maria Carmen
15. Jimenez, Patricio Sanchez
16. Lares, Sixto
17. Magana, Francisco P.
18. Magana, Ignacio
19. Magana, Juvenal
20. Manriquez, Luz Maria
21. Maya, Humberto
22. Maya, Jose Efren
23. Meguences, Jose Manuel
24. Mendez, Alicia
25. Mendez, Graciela
26. Moreno, Lourdes Mendoza
27. Koreno, Patirica Mendoza
28. Naranjo, Graciela Perez
29. Nuno, Paul
30. Ochoa, Felicita
31. Ortega, David
32. Ortega, Elevteria
33. Pacheco, Ampara
34. Perez, Trinidad N.
35. Puente, Maria Elena
36. Quintana, Jr., Jose
37. Quintana, Josefina
38. Quiroz, Jesus
39. Rodriguez, Aurora
40. Rodriguez, Aurora V.
41. Rocha, Angela
42. Romero, Bias
43. Romero, Marcelina
44. Ruiz, Bernarda
45. Ruiz, Lucia
46. Salazar, Aurora
47. Sanchez, Amparo
48. Sanchez, Esmeralda
49. Sanchez, Guillermina
50. Sanchez, Jaime
51. Sanchez, Maria S.
52. Sanchez, Uballo

APPENDIX C

53. Teran, Alfonso
54. Teran, Jr., Alfonso R.
55. Teran, Cointa
56. Teran, Maria
57. Torres, Cecilia
58. Villalpando, Gloria
59. Yanes, Rosalva

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act in discriminating against employees by failing and refusing to rehire employees who had gone on strike and thereby interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by section 1152 of the Agricultural Labor Relations Act. The Board has ordered us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that:

The Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because this is true, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing any of the things listed above.

WE WILL NOT fail or refuse to rehire any employee, or otherwise discriminate against any employee because of his or her membership in, or activity on behalf of, the United Farm Workers of America, AFL-CIO, or any lawful strike or other concerted activity for mutual aid or protection of employees.

ALSO, WE WILL NOT discriminatorily add more harvesting machines to replace employees because they participated in union or strike activity.

WE WILL OFFER all the machine crew and hand crew employees who went on strike in August 1979, their old jobs back and we will pay each of them any money they lost because we refused to rehire them, plus interest computed at the rate of seven percent per year.

Dated: FRUDDEN PRODUCE, INC., et al

By: \_\_\_\_\_  
Representative Title

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 112 Boronda Road, Salinas, California. The telephone number is (408) 443-3160. This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

## CASE SUMMARY

Frudden Produce, Inc. (UFW)

8 ALRB No. 42  
Case Nos. 79-CE-338-SAL  
79-CE-338-2-SAL

### ALO DECISION

The ALO concluded that Respondent violated section 1153(c) and (a) of the Act by failing and refusing to rehire economic strikers who had not been permanently replaced at the time they made unconditional offers to return to work. The ALO also found that Respondent discriminatorily added two additional harvesting machines during the 1979 tomato harvesting season. In addition, the ALO concluded that Respondent unlawfully discriminated in its employment practices during the 1979 and 1980 tomato seasons to discourage its employees from engaging in union activities.

### BOARD DECISION

The Board upheld the ALO's findings and conclusions. In addition, the Board found that the economic strike was converted into an unfair-labor-practice strike by Respondent's unlawful refusal to reinstate the economic strikers. The Board then concluded that the unfair-labor-practice strikers had a right to immediate reinstatement. To remedy Respondent's discriminatory change in working conditions, the Board ordered Respondent to restore its method of harvesting tomatoes to that existing prior to the strike, that is, utilizing three tomato harvesters and three hand-pick crews.

\* \* \*

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

\* \* \*



September 19, 1980, based on a charge filed by the UFW and duly served on Respondent on August 13, 1980, alleges that Respondent committed an additional violation of the Act in 1980 and reiterates the allegations alleged in the original complaint. On October 30, two days after the hearing had concluded, Respondent made a Motion to Reopen the Hearing because, by oversight of its attorney, a mailgram sent by Respondent to the UFW on September 8, 1979 had not been offered into evidence. As General Counsel and the UFW each filed a response to the motion indicating that it had no objection to the reopening of the hearing for the sole purpose of receiving the mailgram into evidence, I treated the motion and the two responses as a stipulation to have the mailgram received into evidence. Accordingly, on November 26, 1980<sup>1</sup> notified the parties that I had received the mailgram into evidence as Respondent's Exhibit 7.

The General Counsel, the Charging Party and Respondent were represented at the hearing. The General Counsel and the Respondent timely filed briefs after the close of the hearing. Upon the entire record, including my observation of the demeanor of the witnesses, and after considering the post-hearing briefs submitted by the parties, I make the following:

#### FINDINGS OF FACT

##### I. Jurisdiction

Respondent admitted in its answer, and I find, that it is an agricultural employer within the meaning of Section 1140.4 (c) of the Act, and that the UFW, the Charging Party herein, is a labor organization within the meaning of Section 1140.4(f) of the Act.

## II. The Alleged Unfair Labor Practices

The complaint alleges that on August 27, 1979, Respondent's employees went on strike and on the same day filed a petition for certification with the Board. An election was held on August 29 and the official Tally of Ballots showed 201 votes for the UFW and 4 votes for "no union", with 10 challenged ballots, insufficient in number to affect the outcome of the election.

The complaint also alleges that the striking employees made unconditional applications for reinstatement on August 30 and 31, 1979, and that Respondent violated Section 1153(c) and (a) of the Act by refusing to reinstate the striking employees although it had not replaced any of the striking employees by August 30, 1979. The complaint further alleges that on September 4, 1979, Respondent violated Section 1153 (c) and (a) of the Act by refusing to rehire employees because of their participation in union activities and other concerted activities in August 1979 during the tomato harvest.

## III. Background Information

Respondent is a California corporation engaged in the raising and harvesting of tomatoes in the King City area of the Salinas Valley. The owner and general manager of Respondent is Dennis Frudden. Feliciano Reyes is Respondent's field supervisor, Manuel Garcia is a supervisor in charge of the hand crews, and Frances Arroyo is a supervisor in charge of the machine crews.

Previous to the 1979 harvest season, Respondent did not directly employ any harvest crews, but employed them through a labor contractor named Edward Esquivel. Respondent had no formal seniority system but priority in employment was always extended to harvest

employees in accordance with their length of service. Every year, just before the season started, the harvest workers would check in with Feliciano Reyes and/or Manuel Garcia to find out the exact date the harvest would begin.

Prior to the 1979 harvest season, Respondent had not used any harvesting machines. In the winter 1978 - 79, Dennis Frudden decided to utilize three harvesting machines for the 1979 season. As he was unable to obtain financing from the banks to purchase them outright, he entered into financial arrangements with his father, Maynard Frudden, Alan Hill and his two sons, and Edwin Thorpe and his son Mike Thorpe, whereby each one of the three families participated in the purchase of a machine. Dennis Frudden made the decision to purchase the machines in order to reduce the costs of harvesting and thus make Respondent's operations more profitable. Respondent placed the three machines into operation at the beginning of the 1979 harvest season and hired Frances Arroyo as the foreperson for the machines. Right from the beginning, Arroyo did all the hiring for the machines in the field. Feliciano Reyes and Manuel Garcia referred applicants for machine work to Arroyo, but she did the actual hiring.

Many of the hand crew and machine-crew workers resided in the Little Waco Camp, a labor camp, a 5 to 15 minute drive away from most of Respondent's fields in the area. Respondent's father owned the labor camp and rented it to Edward Wilson, who operated the camp completely on his own without any intervention by Respondent or Respondent's father. Approximately 200 - 250 persons lived at the labor camp in 48 individual residences. Manuel Garcia, was the

only one of Respondent's supervisors who lived there.

IV.

A. Facts

The 1979 tomato harvest began on approximately August 1, and Respondent put to work four hand crews and three machine crews to harvest the tomatoes. A UFW organizer, Arturo Mendoza, began to make frequent visits to Respondent's fields to talk to the workers about the UFW and an ALRB election.

On August 16, a group of about 70 UFW adherents invaded Respondent's fields to protest the use of the machines. There was no evidence that any of Respondent's employees participated in this demonstration. The UFW adherents shouted at the machine workers, "Strike, strike, get off the machines" Some of the workers left the machines while others continued to work. About a half hour later, sheriff deputies arrived and required the UFW adherents to leave the fields. On August 18, UFW adherents picketed Respondent's fields and tried to dissuade machine employees from entering to work, but without success.

On August 20, because of a reduction in the market demand for tomatoes, Respondent laid off thirty hand-crew employees, including fifteen who had signed UFW authorization cards. There was contradictory testimony about whether two additional employees, named Meme and Molases, who had signed UFW authorization cards had been fired or quit of their own accord.<sup>1/</sup>

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<sup>1/</sup>General Counsel claimed that Respondent laid off and fired these 17 employees because of their having signed UFW authorization cards. General Counsel avers that one of the reasons Respondent's workers went on strike was to protest the layoffs and discharges and consequently the strike was an unfair-labor-practice strike, not an economic one.

During the next few days, members of the hand crews were becoming discontented because they were receiving less and less work to do.<sup>2/</sup> Instead of having an average of 5 trailers to fill daily, as earlier in the season, they were only receiving an average of two per day. So on August 27 the hand crews met during the first hour of work and decided to go out on strike to protest the lack of work.<sup>3/</sup> All 133 members of the hand crews joined in the strike and they marched over to the field where the machines were operating and asked the machine workers to join them. All of the machine workers complied except for seventeen employees, who continued to work on the machines. The strikers<sup>4/</sup> assembled in one of Respondent's fields and elected a ranch committee with Jose Luis Rucio as chairman. Other members of the ranch committee were Rene Lopez, Jaime Wayman, Gonzalo Naranjo and Refugio Zavala.<sup>5/</sup> Rucio contacted UFW organizer Arturo

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2/Dennis Frudden credibly testified that the demand for tomatoes had fallen off and that that was the reason Respondent was giving less work to his hand crews.

3/Jose Luis Rucio and Rene Lopez, the strike leaders, testified that one of the reasons for the strike was to protest the layoff and alleged firing of the workers who had signed authorization cards. However, Bias Romero, a fellow striker and member of the ranch committee, testified that it was only to protest the lack of work and this was corroborated by Respondent's supervisors who testified that neither the strike leaders nor the strikers ever mentioned to them that a reason for the strike was the layoff of workers. Later the UFW ended the strike without any comment about the laid-off and allegedly discharged employees.

4/Some 133 hand crew workers were employed on August 27, 1979. 132 of the 133 hand crew strikers and 56 of the 58 machine crew strikers stayed on strike for its duration. 6 tractor drivers, 5 dumpers and three checkers joined in the strike. Adding these 14 additional strikers to the 188 crew members amounts to 202 strikers which exceeds by just one the number of votes (201) cast in favor of the UFW in the election.

5/All five of these employees were hand-crew workers. Later the strikers elected Bias Romero and Ubaldo Sanchez, members of the machine crews, to the ranch committee.

Mendoza who came out to the ranch, met with the strikers, and advised them what their next steps should be. The strikers signed UFW authorization cards which UFW filed with the ALRB later that day. All of the strikers activities: the walkout, the meeting in the field, the signing of the UFW authorization cards, etc., were observed by Dennis Frudden and/or his supervisors.

During the rest of the day, August 27, the strikers continued to strike and picket Respondent's fields. Respondent continued to harvest tomatoes exclusively with his three harvesting machines, manned by 18 non-striking machine workers, one non-striking dumper, and by supervisory personnel and their wives, plus some farmer volunteers.

On August 28, while the strikers continued the strike and continued the picketing activities at the edge of the fields, Respondent began to hire replacement workers<sup>6/</sup> and the strikers attempted to persuade the replacement workers not to enter the fields. On that day, Respondent harvested the tomatoes with the same three machines manned by 9 non-striking machine workers, 33 replacement workers<sup>7/</sup> and a small number of foremen, etc.

On August 29, the strike and the harvest continued, with the strikers trying to dissuade the replacement workers from entering the fields. Respondent operated three harvesting machines with 10

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<sup>6/</sup>Frances Arroyo testified that she told the new replacements they were hired for the rest of the season. Later she testified they would continue to work until the machines were "laid off".

<sup>7/</sup>Included among the replacement workers were 3 checkers, Albina Hernandez, Sofia Leon, and Rafaela Mendoza, tractor driver Ruben Guerra and picker Miguel Angel Navarro, who were all in Respondent's employ in these capacities the day the strike started.

non-strikers, 26 replacements hired the previous day, and 25 new replacements.<sup>8/</sup>

During the three days of the strike, machine foreperson Arroyo hired all of the replacement workers in the fields. On the second day of the strike, August 28, Frudden signed 2 contracts to rent two additional harvesting machines. During the first part of August, he heard that Steve Horvath, owner of Gonzalez Packing, had two harvesting machines which he was not utilizing then because of union problems. On August 23 or August 24, Frudden contacted Horvath and they discussed in general terms the possible rental of the two machines. On the second day of the strike, August 28, Frudden contacted Horvath and they entered into a written agreement by which Frudden would rent the two machines for an indeterminate period. Frudden at first admitted in his testimony that the strike was one of the factors he considered in deciding to rent Horvath's two machines, but he later denied it. On several occasions during the hearing, Frudden changed his testimony, apparently depending on what he perceived was the answer most advantageous to him - from the way the question was asked. I credit his original testimony that he did take the strike into consideration because it is corroborated by the timing of signing the contract after the strike had started. Frudden admitted at the hearing that his agreement with Horvath would require him to pay rental for the machines only on the days he actually used them. According to the agreement Frudden would pay Horvath \$20.00 per ton harvested or a minimum of \$1,000.00 per day on

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<sup>8/</sup>Included among the new replacement workers was dumper Juan Reyes, who was in Respondent's employ in this capacity the day the strike started.

the days Respondent actually used the machines. Frudden advised Arroyo that he would have Horvath's two machines ready for harvesting on September 4 and that Arroyo should tell the surplus machine-work applicants who came to the fields on August 29 to come back on September 4 and they would be hired. Arroyo testified that she told some 30 to 40 job applicants on August 29 to return on September 4th.

The election was held on the evening of August 29 between 6:00 p.m. and 10:00 p.m. and, as previously stated, the UFW won 201 votes to 4 (no union), with ten challenged ballots. Immediately after the election, the 201 workers led by Rucio informed Dennis Frudden that the strike was over and they all wanted their jobs back. Although Frudden heard the offer, he did not answer Rucio, but climbed into his pickup and drove away.<sup>9/</sup> Respondent did not harvest on either Thursday or Friday August 30 and 31

On the morning of Thursday, August 30, the 200-plus strikers led by Rucio gathered at the packing shed where are located the offices of Respondent, of Frudden Produce Co. (owned by Dennis Frudden's

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<sup>9/</sup>Dennis Frudden denied that he was present at the polling place the night of August 29, and therefore that night the employees never made any offers to return to work. Both Rucio and Rene Perez testified that he was present and that they, at the head of 200 strikers, had made the request for their jobs back. Respondent's own witness, Refugio Zavala, testified that Dennis Frudden had been called for and did come to the polling place that night. Zavala denied the confrontation between Frudden and the strikers and the request for jobs but admitted that he was at the rear of the group of employees as they exited from the polling place. So he was in no vantage point to discern whether the confrontation took place or not. As both Rucio and Lopez and Respondent's own witness, Refugio Zavala, credibly testified that Dennis Frudden was actually present at the polling place, and this fact was confirmed by several other strikers who were also present after the election, I find that Dennis Frudden's denial of the confrontation and the request for rehire not credible and find that the strikers informed Frudden that the strike was over and that they wanted their jobs back.

I found Dennis Frudden's testimony generally unreliable because of several direct contradictions between his testimony and the credible testimony of other witnesses, both General Counsel's and Respondent's.

father Maynard Frudden), a company which sells the tomatoes Respondent harvests, and of King City Packing (owned by Dennis Frudden's brother Ron), a company which packs the tomatoes Respondent harvests. Rucio and the other four members of the employees' ranch committee entered the packing shed and, upon finding Dennis Frudden was not there, conversed with his father, Maynard Frudden. Rucio informed the senior Frudden that all of the workers, both the hand and machine crews, wanted their jobs back. Maynard Frudden told them to return on Saturday to find out whether they would return to work for Respondent.<sup>10/</sup>

Rucio testified that he and the other members of the ranch committee realized that everything would be closed on Saturday so they returned the next day, Friday, but without the 200 strikers. When they first entered the shed they could not locate Dennis Frudden, so they conversed with his brother Ron. Rucio informed Ron that all the strikers, including the hand and machine crews, wanted their jobs back. As they were leaving the offices, Rucio and the ranch committee saw Dennis Frudden and tried to talk to him but to no avail as Dennis Frudden entered his office, closed the door and declined to talk to them

Respondent did not harvest on Saturday, Sunday or Monday, September 1, 2, 3, as the tomatoes were not mature enough.

On Tuesday September 4, 200-plus workers who had been on

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10/Rucio and Lopez' testimony about the meeting with Maynard Frudden is uncontradicted. Maynard Frudden was never called to testify.

11/Respondent points out that Rene Lopez testified that the ranch committee only asked for their jobs back. However, even though Rene Lopez<sup>1</sup> testimony did not corroborate Rucio's testimony in detail, it did in a general sense. Furthermore, the important aspect of this episode was Dennis Frudden's avoidance of a meeting with the ranch committee rather than anything Ron Frudden told him later about the details of the ranch committee's request that morning, which Lopez corroborated.

strike showed up at Respondent's fields prepared to return to work.

A majority of them carried buckets.<sup>12/</sup> Rucio, their spokesman, told Dennis Frudden that the employees were ready to return to work and Frudden told the workers that they were not fired but that the machines had replaced them, that he did not need them anymore, they were not to contact him, and that he would contact them if he needed them.<sup>13/</sup> Two hours later, the three machines, and a fourth one which had been rented from Horvath, started up and Frances Arroyo, the machine crew foreperson, hired 26 new employees as sorters for the machines, as they applied for work in the fields. Arroyo testified that she informed each new applicant that s/he was hired. There had been a high turnover of machine employees each day of the strike but by September 4 there were 15 non-strikers and 35 replacement sorters working on the machines on a permanent basis.

The strikers waited around at the edges of the fields, in expectation that Frudden might recall them to work,<sup>14/</sup> but he did not inform them that they could obtain jobs by applying for work with

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12/Since there were 132 hand-crew strikers and 55 machine-crew strikers this would be a logical preparation for hand workers.

13/Dennis Frudden knew that the strikers with Rucio were both hand and machine-crew workers. He testified that it looked as if they all had buckets and he presumed they were hand crews. I do not credit this testimony. During his entire testimony, Frudden downplayed the fact that the machine-crew workers had gone on strike and that extra efforts had to be taken to recruit people to replace the machine-crew workers during the strike. He went to such an extreme as to claim that a harvesting machine would operate with only two workers' so why should he be concerned about having the machines completely manned with 18 to 20 sorters? Arroyo herself testified that she needed 18 to 20 persons to properly man a machine. The payroll records also substantiate this requirement.

14/ Rucio testified that the workers were merely waiting around to see about jobs and this testimony was confirmed by one of Respondent's witnesses, Evangelina Nuney, who said that the strikers permitted her car to enter the fields that day without any problem.

Arroyo. At the hearing, Frudden testified that he had given Arroyo instructions to give priority to strikers in hiring people to work on the machines. However, neither he nor anyone else in Respondent's employ made this policy known to the strikers.

On Wednesday September 5, and Thursday September 6, Respondent continued the harvest, now with five machines as Frudden put into operation the second of the two machines he had rented from Horvath, and continued to hire new employees (34 on September 5). No strikers applied for work on the machines. Strikers picketed Respondent's fields and tried to dissuade replacement workers from entering the fields to work. On September 7, the strikers stopped picketing. On September 8, Respondent through its attorney, Wayne Hersh, sent the following mailgram to the UFW:

"In response to your inquiry and that of Mr. Jourdane of the ALRB, Frudden Enterprises has not fired any employees. The field employees went on strike demanding more money and a contract. The company has attempted to continue its harvest operation as best they can. The company requests that the UFW notify Mr. Charlie Stoll 15/ in writing if the strike has been abandoned by the UFW and the workers. The company intends to take workers back on a seniority bases as they apply for work and work is available. Please direct all communications to Charlie Stoll, P. O. Box 2130, Newport Beach, California, 92667. Phone (714) 833-8384. Signed Wayne Hersh."

Respondent continued to harvest tomatoes exclusively with five machines manned entirely by non-strikers and replacement workers. The next day, September 9, Frudden instructed Garcia to form two hand crews and put them to work in the harvest on September 11 and 12. On September 10, at the Little Waco Camp, where most of the strikers lived, Garcia conversed with a group of hand-crew

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15/Charlie Stoll is another member of the law firm that represents Respondent.

strikers and told them to choose from among themselves two crews to start work during the next two days.<sup>16/</sup> The workers complied and on September 11 one hand crew (approximately 30 workers) began to harvest and on September 12 the other hand crew (approximately 40 workers) began working. In talking to the hand-crew employees, Garcia failed to mention to them that they were eligible to apply for work on the machines and that, if they did so, they would receive priority over non-seniority applicants. Although Garcia had talked to the hand-crew strikers about rehire, he did not speak to any of the machine-crew strikers residing at the camp about any further employment with Respondent. In fact, neither Frudden himself nor any of Respondent's supervisors or foremen ever informed any striker that there were openings on the machine crews, or that they could apply for such openings, or that they would receive priority in hiring over non-seniority applicants for work on the machines.

On or about September 18, Respondent reduced the number of harvesting machines from 5 to 4. Frudden testified that the labor costs to harvest with machines in 1979 were only approximately \$16.00 a ton compared to approximately \$32.00 a ton with hand crews. He said these amounts were based on a sampling of labor costs taken for the week 8/08/79 through 8/14/79 and that dollar amounts for the hand crews could be slightly higher if the figures for the entire year of 1979 were taken into account. At the end of the 1979 season,

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<sup>16/</sup>Garcia testified that before the strikers agreed to respond to his request, one of them, Ramiro Urbina, made a telephone call and returned to tell the strikers that they should cooperate with the company otherwise it might go against them.

Arroyo told the machine crews to contact her before the harvest began in 1980 and she would give them more exact information about the date the tomato harvest would begin.

A few days before the harvest season began in 1980, Dennis Frudden decided to notify by letter sufficient hand-crew seniority workers to form one crew. Following his instructions, office worker Margaret Ledlow secured a list of the names of the hand-crew workers who had finished the 1979 season and sent letters to the first 33 employees on the list, which contained a total of 63 names. She testified the reason for this was that she had only thirty-three 15-cent stamps in the office at that time. She added that if she had had more stamps available she would have sent letters to the first forty workers on the list. In the letter, Respondent advised the hand-crew workers to report in to Manuel Garcia at the packing shed on August 1, 1980, between 1:00 p.m. and 4:00 p.m.

During the afternoon of August 1, Garcia asked the hand-crew workers who had received the letters to sign on one pad of paper, and asked the hand-crew workers who had not received letters to sign on another pad. Respondent was unable to produce these pads at the hearing ; the supervisors and office worker Margaret Ledlow testified they did not know what had happened to the pads of paper after that afternoon. Garcia told the workers who had received letters and who had reported in for work on August 1 that they had jobs on a hand crew and should report in for work on August 4, the first day of the harvest. Those hand-crew workers who reported in and had not received any letters were told by Garcia to check with him later to see whether there were any openings. At no time did

Garcia ever mention to them that there might be some openings for them in the machine crews. Frances Arroyo happened to be there that afternoon and a few of the machine workers who had finished the 1979 season dropped by and she told them that two machines would be used, starting with one on August 4, the first day of the harvest.

The tomato harvest began on August 4 and a sufficient number of hand-crew workers reported for work that morning; the group consisted of hand-crew workers who had received letters and had reported in on August 1, plus other members of their families. A sufficient number of machine workers reported in to work for Frances Arroyo that same morning. This group consisted of the machine workers who had finished the 1979 season and other machine workers who had worked for Respondent sometime during the 1979 season. Both Feliciano Reyes and Manuel Garcia testified that they had not referred any workers to Arroyo in 1980.

Three hand-crew strikers, Roberto Naranjo, Emilio, Espinosa, and Guadalupe Almaraz,<sup>17/</sup> who had not finished out the 1979 season testified that they had contacted Manuel Garcia at the beginning of the season and he told them there was no work available at that time but that they should check with him later on, or that he would contact them if there were an opening. Two additional hand crew strikers, Enrique Cortez Magana and Jose Luis Pina,<sup>18/</sup> who had not

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<sup>17/</sup>Roberto Naranjo requested work for himself and his family members, Salvador, Maria, Consuelo and Roberto. Emilio Espinosa requested work for himself and his family members, Maria, Jorge and Cubenzio. Guadalupe Almaraz requested work just for himself.

<sup>18/</sup>Enrique Cortez Magana requested work for himself and his family members, Maria N, Maria Rosa, Teresa, Rafaela, Patrosimio, and Maria D.; Jose Luis Pina requested work for himself and his wife Maria de Jesus Cortez.

finished the 1979 season, requested work at Respondent's office on or about August 1 and were told by one of Respondent's office workers that since they resided at the Little Waco Camp, Manuel Garcia would contact them there about work. Garcia never contacted or employed any of the five. Despite the fact that some of them asked him more than once for work, he never referred any of them nor any other hand-crew striker to Arroyo for work on the machines, with the exception of Reynaldo Sepulveda. When Sepulveda contacted Arroyo, pursuant to Garcia's suggestion, for machine work in the fields, Arroyo told him there were no openings on the machines and did not suggest that he return or apply later on.<sup>19/</sup>

Rene Lopez, one of the strike leaders, his father Anselmo Lopez Sr., and his brothers Anselmo Jr., Salvador and Javier, all strikers, asked for employment in 1980.<sup>20/</sup> They contacted Feliciano Reyes about employment, as they had done in previous years, three times in July. On or about August 1, they talked to Dennis Frudden about any kind of work that might be available for them during the upcoming harvest and Frudden told them that he would contact them if he needed them. They never heard from him or anyone else at Respondents about employment in 1980.

Jose Luis Rucio, the other strike leader, called Manuel Garcia in mid-July about work in the 1980 season. Garcia said he

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<sup>19/</sup>The payroll records indicate that one hand-crew striker, Ignacio Ochoa, went to work in one of the machine crews on August 12, 1980, and worked the rest of the 1980 season. There is no additional evidence about the circumstances of his hiring, etc.

<sup>20/</sup>None of the Lopez family returned to work for Respondent in 1979. Although they had seniority they were not included in the two hand crews who returned to work after the strike. Perhaps the reason was that Garcia formed the hand crews from the residents of the Little Waco Camp and the Lopez family did not live there.

would contact Rucio, but Rucio testified he never heard from him. Respondent sent letters of rehire to Rucio and his brother at their latest address (a post office box number) in Respondent's record, as they had finished out the 1979 season on a hand crew. The letters were returned by the Post Office marked "box closed".

In 1980, Respondent continued with its policy of cutting down on the number of hand-crew workers in its employ. In 1979, it finished the season with 63 pickers. In 1980, Respondent started the season with two crews, a total of 47 pickers, working the first two days of the harvest. After a five day interval, Respondent resumed harvesting with only one hand crew, numbering 25 workers. Subsequently, in August and September, Respondent continued with two hand crews numbering between a high of 59 pickers to a low of 32 pickers.<sup>21/</sup> Respondent by and large followed its policy of hiring for its hand crews those pickers who had finished the 1979 season. Although a number of 1980 hand-crew workers' names do not appear on the final 1979 payroll list, Manuel Garcia credibly testified that these hand-crew pickers worked under other hand-crew members' names, almost invariably under that of a relative, as is a common custom in piece-rate harvesting. Manuel Garcia also testified that Respondent hired three hand-crew workers who had not finished the 1979 season. They were Servando Gonazlez, Julian Gonzalez and Jamie Wayman,<sup>22/</sup> who

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21/The exact figures are 59, 53, 32, 34, 48, and 50. The reduced number of hand-crew workers employed in 1980 was even more accentuated than would be indicated by these figures. The total number of hand-crew employees working per week in 1979 varied between 75 to 80 pickers as more pickers were working under other persons' names in 1979 than in 1980.

22/All three were hand-crew workers who had gone out on strike against Respondent in 1979 and, in fact, Wayman had been a member of the ranch committee.

according to Garcia, kept coming out to the fields in search for employment until one day he needed additional hand workers so he hired them for the rest of the season.

Four machine workers who had been strikers in 1979 testified. Bias Romero, who had been a member of the ranch committee in 1979 and was one of the observers at the election, asked Garcia on August 3 or 4 about work and Garcia told him that only those workers who had received letters would be employed to work in the harvest. He then contacted Maynard Frudden, who referred him to Dennis Frudden, who in turn referred him to Pascual Reyes, a mechanic for Respondent, who referred him to his brother, Feliciano Reyes, who told him that there could be no work for him because he had not received a letter. None of them suggested to Romero that he should apply to Frances Arroyo, although they all knew that Arroyo did the hiring of the machine workers.

On August 6, Romero, on his own initiative, began a series of daily attempts to contact Arroyo by telephone. When he finally reached her on August 11, she told him to report to the fields the next day at 12:00 noon. Romero went at 10:00 a.m. because he knew that was the time the machines started up. Arroyo told him that unfortunately the machines had started and the crews were complete and added that she had told him to come at 9:00 a.m. Arroyo told him that she would have Manuel Garcia contact him at the Little Waco Camp if there were openings in the future. Romero never heard from either Garcia or Arroyo after that date.

Ublado Sanchez and six members of his family were also machine workers before the strike in 1979. They all joined in the strike and accompanied the other strikers when they applied for rehire in August and September 1979. In 1980, Sanchez, a resident

at the Little Waco Camp, approached Manuel Garcia at the camp to ask about employment on the machines and Garcia told him to go to the office and sign up. He went to the office on August 1, and Arroyo had him sign his name and the names of his family members on a list. She informed him that those machine employees who had finished the 1979 season would have priority and that after they had been employed she would contact him in the event there were any job openings. On two occasions, he went to the fields and asked Arroyo for employment on the machines and each time she told him to report in every Monday. By this time, Sanchez had found other employment and could not afford to take time off from work frequently with only a slight chance of employment with Respondent.

Maria Carmen Hernandez and two members of her family were machine workers who joined in the 1979 strike and accompanied their co-strikers to request their jobs back in August and September 1979. She and her family did not return to work after the strike in 1979. In 1980, she telephoned Frances Arroyo's house to ask for work for herself and her family and was told that Respondent already had enough workers and that there were no openings for additional machine workers. Later she went to the fields and asked Arroyo for work there and Arroyo replied there were no openings.

Aurora Rodriguez, her daughter Aurora V. Rodriguez, and her son Susano Rodriguez were machine workers who had worked for Respondent before the strike. Aurora Rodriguez and her daughter joined in the strike but her son Susano did not as he was on a disability leave. After the strike, Rodriguez and her daughter did not return to ask for employment on the machines because Dennis

Frudden had told them in the field on September 4, when the workers, en masse, asked to be reinstated, not to contact him as he would contact them. Susano returned to the machine crew work in 1979 after he recovered from his disability and finished but the season.

Aurora Rodriguez and her daughter went to the fields on the first day of the 1980 harvest and asked Arroyo for work on the machines. Arroyo told them that there would be no openings until she had hired all the machine workers who had finished the 1979 season. Arroyo suggested that they return on August 12 because there would be an additional machine in operation on that date and she would hire them if there were any openings after workers who had finished the 1979 season had been hired. She told Susano that he should come on the 12th and start work, as he was assured a job on the machines because he had finished the 1979 season.

On August 12, Susano Rodriguez drove his mother and sister to the fields and they arrived at approximately 10:00 a.m. Susano took his place on one of the machines. His mother asked Arroyo regarding employment for herself and her daughter and Arroyo told them they would have to wait until after the machine workers who had finished the 1979 season had been hired and that if there were still vacancies she would then begin to hire others. They joined a group of job applicants who were waiting to be hired. Arroyo waited until a little after 10:00 a.m. for more of the 1979 workers to report and then, as she was still in need of workers, hired over forty new applicants, who had no previous experience as<sup>23/</sup> machine

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23/Arroyo testified that Respondent had a farming operation in Coalinga but that any seniority gained there would not be transferable to the Respondent's farming operation in King City area. There was testimony that 2 of the 40 new employees hired that day worked in Respondent's Coalinga operation previously.

workers for Respondent, to start work that morning on the machines. Arroyo by-passed Aurora Rodriguez and her daughter. After the machines started operating, Aurora Rodriguez took Arroyo aside and asked her whether she was discriminating against her and her daughter because they had been strikers the previous year. Arroyo denied any discrimination and added that she had worked with Chavistas before<sup>24/</sup> Rodriguez and her daughter then departed. At the beginning of September, Arroyo hired Rodriguez's daughter after having requested her brother to bring her to the fields. A few days later, Susano was sick and Aurora Rodriguez came in his place and later, when Susano recovered and returned to work, Arroyo kept Aurora on the job.

Some 56 machine sorters went on strike in August 1979.<sup>25/</sup>

Only one of the machine-worker strikers, Rosalva Yanes,<sup>26/</sup> returned

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24/Although Arroyo testified at the hearing that she hadn't seen Aurora Rodriguez and her daughter among the group of applicants when she was selecting the new workers, convincing evidence exists that she did. Aurora Rodriguez credibly testified that when she arrived at the machines with her daughter the morning of August 12 that she spoke directly to Arroyo and Arroyo responded to her directly. Furthermore, if Arroyo had not noticed Aurora Rodriguez and her daughter when she was hiring the 40 new employees, she would have surely mentioned it when later Aurora Rodriguez accused her of discrimination and the record indicates her only retort was about having previously worked with Chavistas.

25/Two machine workers, Maria Elena Hernandez and Rosa Robles, worked on the machines prior to the strike in 1979. They did not work the first 3 days of the strike, August 27, 28, 29, but they did work the last 2 days of the strike, September 5 and 6. They are not included in the 56 machine-worker strikers.

26/The payroll records indicate Yanes returned to work on the machines on August 20, 1979 and worked the 1979 and 1980 seasons.

to work during the remainder of the 1979 season. Only two, Aurora Rodriguez and her daughter, returned to work for Respondent on the machines in 1980. None of the remaining 53 machine workers who participated in the strike have returned to work for Respondent in any capacity.

#### B. Analysis and Conclusion

There are two theories upon which Respondent may be found to have violated Section 1153 (c) and (a) of the Act. The first is based on the employer's obligation to rehire economic strikers when they make unconditional offers to return to work.<sup>27/</sup> The second is based on an employer's obligation not to discriminate against employees to discourage them from engaging in union activities.

First to the examination of the first theory. The strikers made unconditional offers to return to work on the night of August 29 and again on August 31 and September 4. Even though Frudden avoided acknowledging these offers on the first two occasions they were nevertheless made directly to him. What exactly was Respondent's duty, at the times these unconditional offers were made? NLRB precedent holds that the employer has the duty to rehire economic strikers who have made unconditional offers to return to work if they have not been

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<sup>27/</sup>General Counsel argued that the strikers should be considered unfair labor-practice strikers rather than economic strikers because one of the reasons for the strike was to protest the laying off of 17 employees for having signed UFW authorization cards. It will not be necessary to determine Respondent's motive in laying off the 17 employees as I find that the strike was not to protest the layoff but solely because of economic reasons. There is insufficient evidence to establish that the layoffs had anything to do with the strike as only the two strike leaders, Rucio and Perez, testified to that effect, while Bias Romero, a member of the ranch committee, and Respondent's supervisors Garcia and Reyes testified to the contrary. Furthermore, the UFW ended the strike without any comment to Respondent about the alleged discriminatory lay offs and discharges.

permanently replaced.<sup>28/</sup>

As of August 29 and 31 and on September 4, when the offers to return to work were made, Respondent had not replaced any of the hand-crew employees. As of August 28, he had made arrangements to have a fourth and fifth machine in the fields by September 4, but according to Frudden's own testimony he would not have incurred any financial expense if he had decided not to use the machines. Furthermore, he had instructed Arroyo to advise machine-worker applicants who came to the fields on August 29 seeking employment to return on September 4 because there would be openings on the two additional machines he planned to use. Arroyo complied with Frudden's request and on August 29 informed 30 to 40 job applicants to return to the fields on September 4. Arroyo testified that workers were never hired ahead of time for work on the machines but only when they actually reported where the machines were located in the morning of a work day when the machines were to be utilized. So the exact time that the 4th machine with its corresponding machine workers replaced the hand-crew workers was at 10:00 a.m. on September 4. Before that time, the hand-crew workers had made their three unconditional requests for rehire to Dennis Frudden: on the night of August 29, the morning of August 31, and the morning of September 4 at 8:00 a.m., two hours before the replacement workers were hired and the fourth machine started up. Needless to say, the requests were clearly made before the fifth machine

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<sup>28/</sup>Under NLRB precedent an employer has the obligation to reinstate economic strikers when they make unconditional applications for rehire unless they have been permanently replaced. The Laidlaw Corporation, 171 NLRB No. 175, 68 LRRM 1257 (1968), enforced, 414 F2d 99, 71 LRRM 3154. (7th Cir. 1969), cert, denied 397 U.S. 920, 73 LRRM 2537 (1970)

and its workers went into action on the following day.

As the 132 hand-crew employees had not been replaced, Respondent had the duty on September 4 to put the three hand crews comprising these 132 employees back to work in the fields harvesting tomatoes, the work they had been doing before the strike.

As to the machine-crew employees, Respondent had already replaced some of them before they, along with the hand-crew employees, had made their offers on August 29, 31 and September 4 to return to work. Previous to the strike, Respondent had employed 76 employees on its three harvesting machines. On September 4, when Respondent resumed its harvesting operations, it had in its employ only 35 permanent replacement workers. These 35 added to the 15 non-striking machine workers who continued to man the three machines filled 50 of the 76 positions, leaving 26 positions vacant. Accordingly, Respondent had the obligation to rehire 26 of the machine workers for those vacant positions, as they had not been replaced.

Since Respondent failed to rehire 132 hand-crew employees and 26 machine crew employees on September 4, it failed to meet its obligation under the Act to rehire all the economic strikers who had made unconditional offers to return to work and who had not been permanently replaced and thereby violated Section 1153 (c) and (a) of the t

Subsequent to Respondent's failure to reinstate the economic strikers, the workers renewed the strike on the following two days, September 5nd 6. The obvious reason for continuing the strike was to protest Respondent's unfair labor practice in not

rehiring the economic strikers who had not been permanently replaced. Accordingly, the economic strike was converted to an unfair-labor-practice strike, and I so find.<sup>29/</sup>

Respondent argues that even if it may have been liable for not reinstating the strikers, that liability terminated as of September 8, 1979 when Respondent sent a mailgram to the UFW offering to reemploy the strikers. However this mailgram cannot be interpreted as an offer of reinstatement to all of the 132 hand crew strikers and the 26 machine crew strikers that Respondent was obliged to rehire.

The key words in the mailgram are: "Frudden Enterprises has not fired any employees", and "The company intends to take workers back on a seniority basis as they apply for work and work is available."

First of all, Respondent, did not, in its mailgram, offer to rehire all unreplaced strikers, only those who applied and in those cases only if there were vacancies. Also, in the mailgram, Respondent denies firing the employees but not laying them off. This is consistent with Respondent's words and conduct on the morning of September 4, when Respondent informed the strikers that they were not being fired but replaced by the machines.

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<sup>29/</sup>However, in respect to any remedy in the instant case, it does not make any difference whether Respondent's workers are found to be economic or unfair-labor-practice strikers because, under either strike classification, the strikers would be entitled to only those positions not filled by permanent replacements as of August 29, 1979. NLRB precedent holds that although unfair-labor-practice strikers are generally replaced, they are not so entitled if they have been permanently replaced before the economic strike became a unfair-labor-practice strike. R.J. Oil & Refining Co. (1954) 108 NLRB 641

The logical interpretation of this mailgram is that Respondent had decided to continue with the machines but would re-hire its hand-crew workers on seniority basis once it resumed its hand-crew operations. Of course, the mailgram is not explicit in regards to this interpretation. However such an interpretation is substantially supported by Respondent's subsequent conduct.

On the day immediately following the sending of the telegram, Respondent gave orders to the hand crew supervisor/ Manuel Garcia, to contact the hand-crew workers and begin steps to form two crews, and on September 11 and 12 approximately 65 of them returned to work. At the same time, Respondent failed to notify the machine-crew strikers and offer them their jobs back or to inform the hand-crew strikers who had not been hired back in the two hand crews that they could apply for work on the machines. In addition, Respondent, neither in the mailgram nor through any of its supervisors, ever informed any of the strikers that preference would be given to any striker, either hand-crew or machine-crew, who applied for work on the machines over any new applicant, nor of the continuing availability of jobs on the machines because of the high turnover.

Another very important fact confirming the above-mentioned interpretation of the mailgram is that Dennis Frudden during his entire testimony, never made any reference to sending a mailgram to the UFW. I do not doubt that the telegram was sent but the most logical explanation of such an omission is that in Frudden's mind his conduct did not vary in any detail from the terms set forth in the mailgram so it would not be so necessary to include the sending of the telegram in his testimony.

Consequently, I find that Respondent's liability for the 1979 season to the 60 to 70 of the hand-crew strikers rehired on September 11 and 12, 1979 ended on those dates but continued in respect to the remaining hand-crew and machine-crew strikers.

Respondent also argues that its policy, as testified to by Frudden, of giving preference to strikers, both machine and hand' crew, over new applicants in respect to hiring for work on the machines satisfied Respondent's duty to rehire strikers. However this policy, accepting arguendo that it actually existed, does not satisfy the requirement, under NLRA precedent, that calls for the employer to actively seek out and offer employment to economic strikers who have not been permanently replaced.<sup>30/</sup> Not only did Respondent not contact the machine-crew employees to inform them of the job offers but Respondent never made this policy known to any of the strikers. In fact, it appears from the record that it was a well-kept secret. Arroyo herself testified that Frudden told her not to give any job applicant preference, whether new or

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<sup>30/Laidlaw Corp. supra.</sup> At the hearing, Respondent mentioned NLRA authority that holds that if a striker has secured regular and substantially equivalent employment elsewhere, his right to be sought out by Respondent for reinstatement would terminate. I agreed, and although I advised him that in my opinion it would be difficult to prove such a fact in the agricultural setting, I repeatedly made it clear to him that he had the right to subpoena the strikers to testify on that point, or present any other evidence by which he wished to prove such regular and substantially equivalent employment. Respondent failed to present any evidence along these lines. There is some testimony Agapito Perez and Ubaldo Sanchez had secured employment elsewhere but no details about it being "regular and substantially equivalent" to their jobs with Respondent. Consequently, I find that none of the strikers secured regular and substantially equivalent employment elsewhere, and therefore their right to be sought out by Respondent for reinstatement did not terminate.

a striker, but to treat them all on an equal basis. She herself testified that she would give strikers preference because they would have already had experience in sorting tomatoes.

The second theory upon which to establish a violation of the Act by Respondent is based on the alleged discrimination by Respondent to discourage union activities by its employees. To evaluate such an alleged violation, the employer's motivation must be ascertained.

Because there is usually a paucity of direct evidence to prove an anti-union motive on the part of an employer, circumstantial evidence must be utilized. Commonly, the circumstantial evidence is comprised of union activities by the employees, the employer's knowledge thereof, the timing of the discriminatory action, etc..

In the instant case, the 101 employees engaged in union activities by engaging in a strike against Respondent, signing authorization cards for an election, and voting in favor of the UFW 201 to 4, with every event witnessed by Respondent and/or its supervisors. It is clear that Respondent had the requisite knowledge, From that point on, its conduct must be analyzed to determine whether it was motivated by legitimate business reasons or by an intent to discriminate against employees to discourage their union activities. In analyzing Respondent's behavior, beginning immediately after it learned of the results of the election, which indicated to it that all the strikers were pro-UFW, it clearly appears Respondent was motivated by a desire to reduce to a minimum the number of known UFW supporters, the strikers, in its employ.

From the night of the election on August 29 until the morning of September 4, Frudden avoided acknowledging the strikers' unconditional offer to return to work, which was made twice to him and twice to his father and brother respectively. There is a clear explanation for this behavior and that is that Respondent was playing for time and delaying for as long as possible the acknowledgement of this request so he would be able to permanently replace as many strikers as he could so that the number of strikers he would be obliged to rehire would be drastically reduced.

True, Respondent had already set the wheels in motion to replace the strikers with machines and replacement workers before the strike ended and he had every right to make such plans because NLRA precedent holds that an employer has the right to hire replacement workers so he can continue to operate his business despite the existence of a strike. As of August 27, 28, and 29, Respondent had already hired replacement workers for its original three harvesting machines. On August 28, it arranged for the rental of two additional machines to begin operation in the fields on September 4. On August 29, Respondent directed Arroyo to line up workers to man the two additional machines starting on September 4. Nevertheless, during the hiatus in harvesting between August 29 and September 4 Respondent had not yet finalized its plan to utilize the two additional machines or the hiring of replacement workers to work on those two machines. As Respondent needed additional time, i.e., until September 4, to permanently replace a large number of strikers with the machines and new workers, it behooved him to ignore the unconditional offers by the strikers

during the interval.

This need for delay in respect to the unconditional offers explains clearly the reason Frudden ignored Jose Luis Rucio's request on the night of the election on behalf of the 200 strikers for the return to their jobs. It also clearly explains why Frudden avoided talking to Rucio and the members of the committee on August 31, when they came to his office to ask for their jobs back. His behavior of retreating into his office, closing the door, and declining to talk to Rucio and the ranch committee members creates a strong inference that his father Manynard Frudden had told him about the visit the previous day and the employees' request through their spokesman Rucio, for their jobs back. Consequently, Frudden knew exactly what Rucio and the ranch committee sought from him and eluded a confrontation by seeking refuge in his office.

On September 4, Frudden at last confronted the strikers and their leader Rucio and was prepared to counter their offer of an unconditional return to work by announcing that they had all been replaced by machines and therefore were no longer needed. He assumed he no longer had the duty to rehire them since within an hour or two new employees would be hired to work on the two new machines and the strikers could then be considered as "perm-anently replaced."

Subsequent actions on Frudden's part indicate the motivation behind his actions was to keep the number of former strikers in his employ to a minimum. Frudden never informed the petitioning strikers, either on the morning of September 4 or

subsequently, that there were jobs available on the machines that had replaced the hand crews. Respondent knew the addresses of all the hand-crew employees and most of the machine-crew employees, and that many of both groups lived in the Little Waco Camp, a short distance from Respondent's fields. Nevertheless, at no time during the rest of the 1979 harvest season did Respondent contact them to inform them that there were daily job openings on the harvest machines due to a high turnover of replacement employees, although the strikers represented a convenient available source of machine workers who all had experience in sorting tomatoes. Arroyo testified that even the hand crew employees had the needed experience because sorting tomatoes in the fields and on the machines involve the same skills.

There is an additional circumstance that convincingly indicates the Respondent's motive in putting on machines 4 and 5 was to retaliate against his employees for thier union activities, and that was the higher cost he had to pay for the additional two machines compared to what he would have had to pay for the hand crews had he returned them to work on September 4 for the rest of the season.

Frudden himself testified that the labor cost for a hand crew was \$32.00 a ton and for a machine crew \$16.00. However, when the \$20.00 per ton machine rental is added to the \$16.00 labor cost per ton, the total comes to \$36.00 per ton, making the machine-harvest cost \$4.00 higher per ton than the hand-crew cost. So it is obvious Respondent had no legitimate business reason whatsoever to add machines 4 and 5 and the motivating

factor was to discriminate against his employees for their union activities, i.e., the strike, the election of a ranch committee, the voting in favor of the UFW, etc.

In 1980, Respondent's employment practices continued to demonstrate a motivation to maintain the number of strikers in his employ to a minimum. These employment practices included reducing the number of hand-crew workers (wholly comprised of strikers) and forestalling the machine-crew strikers and the hand-crew strikers from applying for and being hired for work on the machines.

In 1980, as in 1979, all the members of the hand crews were former strikers, and Respondent continued with its policy, initiated in 1979, to reduce the number of workers employed in the hand crews. In 1979, Respondent cut the number of hand crew workers from 133 (3 crews) before the strike to somewhat over 70 (2 crews) after the strike. In 1980, Respondent continued with two crews, but with a total hand-crew force, varying from about 25, 32, or 34 workers up to 50, 53 and 59, and reduced the number of hand-crew workers even more. Accordingly, the number of strikers employed by Respondent in the hand crews was acceptable because it was in the minority compared to the 80 to 90 employed on the machines, which were manned exclusively by non-strikers with the exception of Ignacio Ochoa, Rosalva Yanes, Aurora Rodriques and her daughter.

In 1980, Respondent continued with its policy to assure that virtually none of the machine workers would be former strikers. The policy was again implemented by forestalling the hiring of both hand-crew strikers and machine-crew strikers for work on the harvesting machines. First to the forestalling of the hand-crew

strikers. Respondent knew on August 1, 1980, from the overwhelming response to its letters to the hand crews about 1980<sup>31/</sup> employment, by both letter recipients and others, that there would be more than enough applicants for the reduced amount of hand-crew jobs in 1980. However, Respondent never mentioned to the surplus hand-crew applicants that there was little or no chance for them to be hired onto the hand crews that year or, because of that fact, that it would be advisable for them to talk to Arroyo, the machine-crews' foreperson, who happened to be present there that day, and apply for work on the machines.<sup>32/</sup>

Instead, Respondent asked them to sign their names and the names of members of their families on a pad of paper which was never used to call any of them to work and, in fact, there was no evidence presented that would account for its whereabouts subsequent to that day.<sup>33/</sup> Of course, the foreseeable effect of having the hand-crew applicants sign their names that day on the pad of paper was

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31/Additional proof that Respondent was aware on August 1 it was to use fewer hand-crew employees during the 1980 harvest season was Dennis Frudden's instructing Ledlow to send letters to no more than 40 employees on the list of the 63 hand-crew members who finished the 1979 season.

32/It appears hand-crew work is more remunerative than machine work and, because of that, an experienced hand-crew worker would prefer hand work to machine work and would continue to try to secure hand work if probable in the near future rather than securing a machine job immediately. In this case, Respondent never suggested the alternative of machine work so the hand-crew strikers never really had an opportunity to make a selection between the two. Of course, the option to start with a machine crew and then switch to a hand crew later on was never available to the workers since Arroyo testified that this kind of switchover was not permitted by company rules.

33/Manuel Garcia denied that there was a second list for those workers who had not received letters. However, the General Counsel's witnesses testified to this fact and it was corroborated by Respondent's office-worker, Margaret Ledlow, who was called to testify by Respondent.

to instill in them a certain degree of optimism that they would eventually be called to work in the hand crews and thus not think about alternative employment with the machine crews. Subsequently, Manuel Garcia kept up their hopes for future employment by never giving a simple negative reply to later inquires but rather making such remarks as, "Check with me later, there may be an opening", or "Once we finish hiring last year's finishers, I'll contact you", etc. It appears the strategy worked since none of the hand-crew strikers who had finished the 1979 season ever applied for work in the machine crews in 1980.<sup>34/</sup>

Now to the forestalling of the machine-crew strikers. Every one of the four families of machine crew strikers who applied for work on the machine crews experienced difficulties of various degrees during a period in which Respondent was hiring approximately 50 new workers who had previously had no experience on Respondent's machines in the King City area.

Bias Romero, the UFW observer and member of the ranch committee, received from Respondent, what can be characterized accurately, in the vernacular, as "the run-around". Respondent, along with various supervisors, knowing full well that Arroyo did all hiring of workers, kept referring him to other supervisors. Arroyo, who was to hire over forty new employees the following

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<sup>34/</sup>The one exception was Reynaldo Sepulveda but Arroyo rejected his offer with a flat no without suggesting he return on August 12 when two new machines would go into operation. Ignacio Ochoa, a hand-crew striker, began to work in Respondent's machine crews in 1980 but the only evidence was the payroll records. So there is no additional evidence to indicate whether it was Respondent's management who referred him to employment on the machines.

morning gave him a late hour to report into work and thus avoided hiring him and his wife with the excuse that he had arrived too late since she had finished with all the hiring.

Ubaldo Sanchez, another member of the ranch committee, sought machine work with Arroyo for himself and his large family on August 1. Arroyo asked him and his family to sign up and then told them that she would notify him if she needed people. She never suggested to him that they show up on either August 4, when the first two machines started up, or on August 12th, when the 3rd and 4th machines went into operation. Later, when he continued to go to the fields for employment, she told him to report in on Mondays. This effectively discouraged him from making further attempts.

In the case of Aurora Rodriguez and her daughter, Respondent went to the extreme measure of actually hiring 40 new employees in the presence of these two machine strikers who were applying for machine employment at that very moment. Eventually they were hired at the beginning of September but that may very well not have happened had not Aurora Martinez called to Arroyo's attention the patent discrimination utilized by Arroyo on the morning of the September 12, when she bypassed them in favor of over forty new applicants.

Maria Carmen Hernandez' treatment by Respondent was quite abrupt compared to the treatment experienced by the three other aforementioned families. First, the outright rejection she met with when she attempted to contact Arroyo by telephone and then later an outright "no" in the fields with no suggestion about returning later to inquire about openings.

In summary Respondent had the clear duty to reinstate 132 hand crew workers and 26 machine crew workers on September 4, as none of these strikers had been replaced as of that day, and refused to do so.<sup>35/</sup> In fact, Respondent proceeded to put into operation two additional harvesting machines that cost him \$4.00 more per ton harvested than his cost would have been if he had rehired the 132 hand-crew strikers. Respondent's rental of these two additional machines at a loss to him clearly demonstrates that his true motive in so doing was to retaliate against the strikers for their union activities. Confirming this illegal motive was Respondent's subsequent action in carrying out a plan to systematically exclude hand-crew and machine-crew strikers from its expanding machine-crew work force during both the 1979 and 1980 harvest seasons.

On the basis of the entire record herein, I find that Respondent has violated Section 1153(c) and (a) of the Act by failing and refusing to rehire economic strikers who had not been permanently replaced after they had made unconditional offers to return to work and also by discriminating in its employment practices in 1979 and 1980 to discourage its employees from engaging in union activities.

#### The Remedy

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 1153 (c) and (a) of

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<sup>35/</sup>Respondent also had the duty to seek out and offer employment to workers whose positions in the machine crews became vacant as the season progressed and it failed to do so.

the Act, I shall recommend that it cease and desist therefrom and take certain affirmative actions designed to effectuate the purposes of the Act.

In order to completely remedy the adverse effects of Respondent's unfair labor practices, I find it necessary to require Respondent to restore the status quo ante in its operations, i.e. to reestablish its prior operation consisting of three harvesting machines with their corresponding crews, and three hand crews. An order which does not require Respondent to resume its harvesting operations with three rather than 4 or 5, machines and to reinstate the discriminatory discharged employees would not completely remedy Respondent's unfair labor practices. If the remedy ordered herein constitutes a hardship to Respondent, it is only fair that the wrongdoer rather than the wronged employees should bear it.<sup>36/</sup> The backpay and reinstatement remedies shall be based on the status quo ante, as of August 29, 1979, when the employees made their first unconditional offer to return to work and Respondent had in its employ three machine crews which consisted of 76 sorters and had not replaced any members of the three hand crews which consisted of 133 pickers.

In the instant case, either as economic strikers or unfair-labor-practice strikers, the hand crew workers and machine crew workers are entitled to reinstatement as long as they were not permanently replaced during the economic phase of the strike and their jobs still exist.<sup>37/</sup>

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<sup>36/</sup>See Townhouse T.V. & Appliances, 213 NLRB No. 102 (1974).

<sup>37/</sup>Of course, if Respondent can show that a striker has secured regular and substantially equivalent employment with some other employer, or has left the labor market, the striker would not be entitled to reinstatement.

a) The Hand-Crew Strikers

As of September 4, 1979, when the hand-crew workers made their unconditional offers to return to work, Respondent had hired no hand-crew replacements to harvest the<sup>1</sup> tomatoes during the strike. Neither had it put into operation the two additional harvesting machines or hired any employees to man them. Consequently, as they had not been permanently replaced, and as their jobs had not been abolished, Respondent clearly had the obligation to rehire all of the hand crew strikers at that time.

I shall order, therefore, that Respondent offer the hand-crew strikers reinstatement to their former or substantially equivalent positions (to the extent it has not already done so) without prejudice to their seniority or other rights and privileges, and make each of them whole for any loss of earnings he or she may have suffered by reason of Respondent's refusal to reinstate him or her on September 4, 1979, by payment to him or her of a sum of money equal to the amount he or she would have normally earned as a hand-crew worker during the tomato harvesting seasons from September 4, 1979 to the date of Respondent's offer of reinstatement plus interest computed at seven percent per annum, less his or her net earnings during such period. The backpay provided for herein shall be computed in accordance with the formula adopted by the Board in Sunnyside Nurseries, Inc. 3 ALRB No. 42 (1977).

The hand-crew strikers entitled to a remedy shall be all persons listed on the hand-crew payroll for August 27, 1979,

the first day of the strike, except Miguel Angel Navarre, since every hand crew striker participated in the strike with the exception of Navarre, who went to work on the harvesting machines.

The following-named checkers, tractor drivers and dumpers shall be considered part of the hand crews for purposes of the remedy ordered herein as they all participated in the strike and the unconditional request to return to work: Checkers: Aurora Mendoza, Leticia Meza and Guadalupe Urbina. Tractor Drivers: Anselmo Lopez, Anselmo Lopez Jr., Salvador Lopez, Angel Mendoza and Armando Tinoco. Dumpers: David Rodriguez, Jorge Mendez, Javier Castro, and Rene Lopez. The remaining checkers, drivers and dumpers continued to work during the strike either in their previous positions or in the machine crews so they shall not be considered strikers.

b) Machine-Crew Strikers

As of August 29, 1979, when the machine-crew strikers made their unconditional offer to return to work, Respondent had hired 35 permanent replacements for their positions. The criteria I used to determine that 35 of the machine workers who worked on August 29 were permanent replacements was the fact that Frances Arroyo had told the new machine workers, upon hiring them, that their jobs would last for the rest of the season. I do not consider as permanent replacements the machine workers who worked on the machines for one day or less. There was credible testimony that during the three-day strike many machine workers came just to help out during the emergency. These temporary replacements included Beth Thorpe, a relative of the owners of one of the three

original machines, and others; thus there is no basis for finding that a machine worker who only worked one day during the strike can be considered a permanent replacement. I find that checker Rafaela Mendoza, picker Miguel A. Navarro, tractor-driver Ruber Guerra, and dumper Juan Reyes, all of whom worked on the machines on August 29, were not permanent replacement workers as they all returned within a week to their former positions with Respondent.

As of August 29, 1979, 13 machine workers<sup>38/</sup> had not gone out on strike and two pre-strike machine workers, Maria Elena Hernandez and Rosa Robles, did not work on August 27, 28, or 29 but resumed work on September 4<sup>39/</sup> and worked throughout the rest of the 1979 season. I find that these 15 employees continued with their permanent employment at Respondent's operations and are to be considered non-strikers.

When the strike started on August 27, Respondent had in its employ 76 machine workers (sorters) and during the period from August 29 through the morning of September 4 there were 50 such positions permanently filled by non-striking employees and permanent replacements, leaving 26 of such positions still open. Between September 4, 1979, and the end of the 1979 season, a number of the non-striking and permanent-replacement machine workers (sorters) terminated employment with Respondent.

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<sup>38/</sup>The names of these 13 machine workers are as follows: Irma Gutierrez, Isabel Gurrusquiela, Gloria Reyes, Maria Magana, Maria D. Hernandez, R. M. Ruiz, Ester Cantu, Adriana Garcia, Betty Rodriguez, Juana Torres, Estella Mendoza, Maria Arreola, and Gloria Beltran. The harvest-machine operators also continued to work during the strike so neither will they be considered strikers.

<sup>39/</sup>Frances Arroyo testified that some of the machine workers who did not support the strike did not work every day during the strike because they had problems coming through the picket lines.

Since Frances Arroyo promised the machine replacement workers employment only to the end of the 1979 harvest season,<sup>40/</sup> I conclude that the machine-crew strikers shall have priority in respect to machine-crew jobs over all permanent replacements who were rehired for the 1980 season and shall recommend a remedy in accordance with this conclusion. Since employers have the right to continue their business operations during a strike by employing replacement workers, they should have the concomitant right to make a sufficient commitment to replacement workers so as to be able to recruit an adequate work force. In the instant case, I find that it was necessary for Respondent to promise the replacement workers employment for the duration of the 1979 season.

In order to effect the remedy for the machine-crew strikers in the most equitable manner, and to facilitate compliance I shall order Respondent to list the 56 machine-crew strikers in the order which it would have offered them reinstatement, using any fair, equitable and lawful method<sup>41/</sup> (such as seniority, for example) in preparing the list. Such a list shall be furnished to the Salinas area Regional Director, to the Charging Party and

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40/Frances Arroyo testified that she had promised them employment until the end of the season but also added that she told them they would work until the machines were "laid off". Since Respondent would cease to use the machines after the season was over, and thus "lay them off", this additional comment by Arroyo cannot be interpreted to contradict or vary in any way her original testimony about promising the permanent replacements their jobs until the end of the season (1979).

41/As 1979 was the first year machines were in operation on Respondent's farming operations, I shall direct that any seniority gained by hand crew workers in previous years in Respondent's employ shall be recognized and utilized.

to each of the machine-crew strikers. It will serve as the basis for offering machine-crew strikers reinstatement to the 26 positions for which no permanent replacements were ever hired and to subsequent vacancies which may occur prior to the time full compliance with this order is achieved, and, to the extent that any names remain on the list, they will constitute a preferential hiring list.

Accordingly, I shall recommend that Respondent offer to 26 of the machine-crew strikers, in accordance with the order of their names on the above-described list, reinstatement to their former or substantially equivalent positions (to the extent it has not already done so) without prejudice to their seniority or other rights and privileges, and make each of them whole for any loss of earnings he or she has suffered by reason of Respondent's refusal to reinstate him or her on September 4, 1979, by payment to him or her of a sum of money equal to the amount he or she would have normally earned as a machine worker during the tomato harvest seasons from September 4, 1979 to the date of Respondent's offer of reinstatement plus interest at seven percent per annum, less his or her net earnings during such period. The back pay shall be computed in accordance with the formula adopted by the Board in Sunnyside Nurseries, Inc., supra.

Furthermore, I shall order that Respondent in accordance with the above-described list, offer reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, to the remaining 30 machine-crew strikers to the extent vacancies have

occurred<sup>42/</sup> in machine-crew positions (sorters) after the said strikers applied for reinstatement on September 4, 1979 and make each of them whole for any loss of earnings he or she has suffered by reason of Respondent's failure and refusal to reinstate them at the time of the vacancy by payment to him or her of a sum of money equal to the amount he or she would have normally earned as a machine worker during the tomato harvest seasons from the date of the vacancy to the date of Respondent's offer of reinstatement plus interest at seven percent per annum, less his or her net earnings during such period. The back pay shall be computed in accordance with the formula adopted by the Board in Sunnyside Nurseries, Inc., supra.

The machine-crew employees entitled to a remedy as strikers shall be all persons listed on the machine-crew payroll for August 27, 1979 with the exception of 15 machine workers and operators mentioned above who continued to work for Respondent some time during the strike and any other machine-crew employees who are listed as having worked on August 27, 1979.

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42/In determining the date that vacancies occur, it will be the actual ones in respect to the dates that permanent replacements left Respondent's employ during the 1979 season and the dates non-strikers left Respondent's employ at any time prior to the compliance with this decision. However in respect to the permanent replacements who left after the 1979 season or are still in the employ of Respondent I have determined that their respective positions became vacant at the end of the 1979 season. This is in keeping with the above-mentioned machine-crew strikers' priority for employment over the permanent replacements after the 1979 season.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Frudden Enterprises, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to rehire any employee because of his or her union membership or union activity, or otherwise discriminating against any employee in regard to his or her hire or tenure of employment, or any term or conditions of employment except as authorized by Section 1153(c) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing any employees in the exercise of their right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities.

2. Take the following affirmative acts, which are deemed necessary to effectuate the policies of the Act:

(a) Reestablish the method of harvesting which Respondent utilized prior to September 4, 1979, that is, utilizing three harvesting machines and three hand crews and offer to all hand-crew and machine-crew strikers as described in the section of the attached decision entitled "The Remedy" immediate and full reinstatement to their former positions or, if those jobs no longer exist, to substantially equivalent positions,

without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay and other economic losses they have incurred, in the manner provided in the section of the attached Decision entitled "The Remedy" together with interest thereon computed at the rate of seven percent per annum.

(b) Preserve and, upon request, make available to this Board and its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the back-pay period and the amount of back pay due under the terms of this Order.

(c) Sign the Notice to Employees attached hereto. Upon its translation by a Board agent into appropriate languages, Respondent shall reproduce sufficient copies in each language for the purposes set forth hereinafter.

(d) Post copies of the attached Notice, in all appropriate languages, for 60 consecutive days in conspicuous places on its property, the period and place(s) of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time between August 1, 1979 and the time such Notice is mailed.

(f) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its employees assembled on company time and property, at times and places to be determined by the Regional Director. Following the reading, a Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(g) Notify the Regional Director, in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply therewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

DATED: February 3, 1981

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ARIE SCHOORL  
Administrative Law Officer

## NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Relations Act in discriminating against employees by failing and refusing to rehire employees who had gone on strike and thereby interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 1152 of the Agricultural Labor Relations Act. The Board has ordered us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that:

The Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because this is true, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing any of the things listed above.

WE WILL NOT fail or refuse to rehire any employee, or otherwise discriminate against any employee because of his or her membership in, or activity on behalf of, the United Farm Workers of America, AFL-CIO, or any lawful strike or other concerted activity for mutual aid or protection of employees.

Because the Board found that we failed to rehire certain hand-crew strikers and machine-crew strikers on and after their union activity, WE WILL OFFER to reinstate them to their former jobs and reimburse them for any money they lost because we failed to rehire them, plus interest computed at the rate of seven percent per year.

DATED:

FRUDDEN ENTERPRISES, INC.

By: \_\_\_\_\_  
(Representative) (Title)

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.